

## SENATE BILL No. 372

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-2; IC 9-18-2-45.5; IC 9-24-18-7; IC 9-25-8-2; IC 11-10; IC 22-4-17-1; IC 22-5; IC 34-30-2-87.3; IC 35-33-8-4; IC 35-43-5; IC 36-2-13-7.5.

**Synopsis:** Unauthorized immigration matters. Requires the department of correction to: (1) evaluate the citizenship and immigration status of a committed offender; and (2) notify and work with the United States Department of Homeland Security to deport offenders who are in the United States unlawfully. Provides that the fact that a defendant is a foreign national not lawfully admitted to the United States is a fact relevant to the risk of nonappearance a judicial officer must consider in setting bail. Requires a sheriff to make a reasonable effort to determine the citizenship or immigration status of certain persons. Prohibits a governmental body from enacting an ordinance, resolution, rule, or policy that prohibits or limits another governmental body from sending, receiving, maintaining, or exchanging information on the citizenship or immigration status of an individual. Allows law enforcement agencies to negotiate terms of a memorandum of understanding concerning a pilot project for the enforcement of federal immigration and customs laws. Requires an individual filing a claim for unemployment insurance to provide certain information in person to the department of workforce development. Prohibits an employer from knowingly hiring, after January 1, 2010, an unauthorized alien. Authorizes, subject to availability of funds, the attorney general to: (1) investigate a complaint that an employer knowingly employed an unauthorized alien; (2) verify the work authorization of the alleged unauthorized alien with the federal government; (3) notify United States Immigration and Customs Enforcement, local law enforcement agencies, and the appropriate prosecuting attorney under certain conditions; and (4) maintain certain records of violation orders.  
(Continued next page)

**Effective:** July 1, 2009.

**Kruse**

January 8, 2009, read first time and referred to Committee on Pensions and Labor.



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Authorizes a prosecuting attorney to file a civil action against an employer for knowingly hiring an unauthorized alien in the county where the alien is employed. Prohibits a prosecuting attorney from filing an action against an employer that verified the employment authorization of an employed individual through E-Verify. Establishes an affirmative defense if the employer complied in good faith with the federal employment verification requirements. Makes it a Class A infraction for a person who is unlawfully in the United States to register a motor vehicle. Makes it a Class C misdemeanor if a person is unlawfully present in the United States and knowingly or intentionally operates or permits the operation of a motor vehicle on a public highway without financial responsibility in effect with respect to the motor vehicle. Provides that: (1) a person who counterfeits or falsely reproduces a driver's license with intent to use the license or to permit another person to use the license commits a Class D felony (instead of a Class B misdemeanor); and (2) a person who knowingly or intentionally produces or distributes a document that is not issued by a government entity and that purports to be a government issued identification commits a Class C felony (instead of a Class A misdemeanor). Makes making or distributing a forged instrument a Class B felony.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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## SENATE BILL No. 372

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A BILL FOR AN ACT to amend the Indiana Code concerning immigration.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 5-2-18 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2009]:

4 **Chapter 18. Citizenship and Immigration Status Information**  
5 **Sec. 1. As used in this chapter, "governmental body" has the**  
6 **meaning set forth in IC 5-22-2-13.**

7 **Sec. 2. A governmental body may not enact an ordinance, a**  
8 **resolution, a rule, or a policy that prohibits or in any way restricts**  
9 **another governmental body, including a law enforcement officer**  
10 **(as defined in IC 5-2-1-2), a state or local official, or a state or local**  
11 **government employee, from taking the following actions with**  
12 **regard to information of the citizenship or immigration status,**  
13 **lawful or unlawful, of an individual:**

14 (1) **Communicating or cooperating with federal officials.**  
15 (2) **Sending to or receiving information from the United States**



1 Department of Homeland Security.

2 (3) Maintaining information.

3 (4) Exchanging information with another federal, state, or  
4 local government entity.

5 Sec. 3. If a governmental body violates this chapter, a person  
6 lawfully domiciled in Indiana may bring an action to compel the  
7 governmental body to comply with this chapter.

8 SECTION 2. IC 5-2-19 IS ADDED TO THE INDIANA CODE AS  
9 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
10 1, 2009]:

11 Chapter 19. Enforcement of Federal Immigration Laws

12 Sec. 1. As used in this chapter, "law enforcement agency" has  
13 the meaning set forth in IC 5-2-17-2.

14 Sec. 2. (a) A law enforcement agency may negotiate the terms of  
15 a memorandum of understanding between the law enforcement  
16 agency and the United States Department of Justice or the United  
17 States Department of Homeland Security concerning a pilot  
18 project for the enforcement of federal immigration and customs  
19 laws in Indiana.

20 (b) A memorandum of understanding described in subsection  
21 (a) shall be signed on behalf of the law enforcement agency, unless  
22 otherwise required by the United States Department of Justice or  
23 the United States Department of Homeland Security.

24 (c) A law enforcement agency shall designate appropriate  
25 employees of the law enforcement agency, as approved under the  
26 memorandum of understanding, to be trained under a  
27 memorandum of understanding described in subsection (a).

28 (d) A law enforcement agency shall apply for federal funding,  
29 as available, for the costs associated with training the applicable  
30 employees of the law enforcement agency under a memorandum of  
31 understanding described in subsection (a).

32 (e) An employee certified as trained in accordance with a  
33 memorandum of understanding described in subsection (a) may  
34 enforce federal immigration and customs laws while performing  
35 within the scope of the employee's duties.

36 (f) A law enforcement agency shall coordinate efforts, as needed,  
37 with the executive director of the department of homeland security  
38 to address issues of national security in implementing this section.

39 SECTION 3. IC 9-18-2-45.5 IS ADDED TO THE INDIANA CODE  
40 AS A NEW SECTION AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

41 Sec. 45.5. A person who:

42 (1) registers a vehicle under this chapter; and

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1           **(2) is unlawfully present in the United States;**  
 2           **commits a Class A infraction.**

3           SECTION 4. IC 9-24-18-7 IS AMENDED TO READ AS  
 4           FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. A person who  
 5           counterfeits or falsely reproduces a driving license with intent to use  
 6           the license or to permit another person to use the license commits a  
 7           ~~Class B misdemeanor.~~ **Class D felony.**

8           SECTION 5. IC 9-25-8-2 IS AMENDED TO READ AS FOLLOWS  
 9           [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person who knowingly:

10           (1) operates; or

11           (2) permits the operation of;

12           a motor vehicle on a public highway in Indiana commits a Class A  
 13           infraction unless financial responsibility is in effect with respect to the  
 14           motor vehicle under IC 9-25-4-4. However, the offense is a Class C  
 15           misdemeanor if the person knowingly or intentionally violates this  
 16           section and has a prior unrelated conviction or judgment under this  
 17           section **or if the person is unlawfully present in the United States.**

18           (b) Subsection (a)(2) applies to:

19           (1) the owner of a rental company that is referred to in  
 20           IC 9-25-6-3(e)(1); and

21           (2) an employer that is referred to in IC 9-25-6-3(e)(2).

22           (c) In addition to any other penalty imposed on a person for  
 23           violating this section, the court may recommend the suspension of the  
 24           person's driving privileges for one (1) year. However, if, within the five  
 25           (5) years preceding the conviction under this section, the person had a  
 26           prior unrelated conviction under this section, the court shall  
 27           recommend the suspension of the person's driving privileges for one (1)  
 28           year.

29           (d) Upon receiving the recommendation of the court under  
 30           subsection (c), the bureau shall suspend the person's driving privileges  
 31           for the period recommended by the court.

32           SECTION 6. IC 11-10-1-2 IS AMENDED TO READ AS  
 33           FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A committed  
 34           criminal offender shall, within a reasonable time, be evaluated  
 35           regarding:

36           (1) ~~his~~ **the offender's** medical, psychological, educational,  
 37           vocational, economic and social condition, and history;

38           (2) the circumstances surrounding ~~his~~ **the offender's** present  
 39           commitment;

40           (3) ~~his~~ **the offender's** history of criminality; ~~and~~

41           **(4) the citizenship or immigration status of the offender; and**

42           ~~(4)~~ **(5)** any additional relevant matters.

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(b) In making the evaluation prescribed in subsection (a), the department may utilize any presentence report, any presentence memorandum filed by the offender, any reports of any presentence physical or mental examination, the record of the sentencing hearing, or other information forwarded by the sentencing court or other agency, if that information meets the department's minimum standards for criminal offender evaluation.

(c) If an offender has undergone, within two (2) years before the date of ~~his~~ **the offender's** commitment, a previous departmental evaluation under this section, the department may rely on the previous evaluation and the information used at that time. However, this subsection does not deprive an offender of the right to a medical and dental examination under IC 11-10-3.

**(d) If the department is unable to verify the citizenship or immigration status of a committed criminal offender, the department shall notify the United States Department of Homeland Security that the citizenship or immigration status of the offender could not be verified. The department shall work with the United States Department of Homeland Security to deport a committed criminal offender who is unlawfully present in the United States.**

SECTION 7. IC 11-10-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) A committed offender shall, within a reasonable time, be evaluated regarding:

- (1) ~~his~~ **the offender's** medical, psychological, educational, vocational, economic and social condition, and history;
- (2) the circumstances surrounding ~~his~~ **the offender's** present commitment;
- (3) ~~his~~ **the offender's** history of delinquency; ~~and~~
- (4) the citizenship or immigration status of the offender; and**
- (5) any additional relevant matters.**

(b) In making the evaluation prescribed in subsection (a), the department may utilize reports of any precommitment physical or mental examination or other information or records forwarded by the committing court or other agency, if that information meets the department's minimum standards for delinquent offender evaluation.

(c) If a committed offender has undergone, within one (1) year before the date of ~~his~~ **the offender's** commitment, a previous departmental evaluation under this section, the department may rely on the previous evaluation and the information used at that time. However, this subsection does not deprive an offender of the right to a medical and dental examination under IC 11-10-3.

**(d) If the department is unable to verify the citizenship or**

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1 **immigration status of a committed offender, the department shall**  
 2 **notify the United States Department of Homeland Security that the**  
 3 **citizenship or immigration status of the committed offender could**  
 4 **not be verified. The department shall work with the United States**  
 5 **Department of Homeland Security to deport a committed offender**  
 6 **who is unlawfully present in the United States.**

7 SECTION 8. IC 22-4-17-1, AS AMENDED BY P.L.108-2006,  
 8 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 JULY 1, 2009]: Sec. 1. (a) Claims for benefits shall be made in  
 10 accordance with rules adopted by the department. The department shall  
 11 adopt reasonable procedures consistent with the provisions of this  
 12 article for the expediting of the taking of claims of individuals for  
 13 benefits in instances of mass layoffs by employers, the purpose of  
 14 which shall be to minimize the amount of time required for such  
 15 individuals to file claims upon becoming unemployed as the result of  
 16 such mass layoffs.

17 (b) Except when the result would be inconsistent with the other  
 18 provisions of this article, as provided in the rules of the department, the  
 19 provisions of this article which apply to claims for, or the payment of,  
 20 regular benefits shall apply to claims for, and the payment of, extended  
 21 benefits.

22 (c) Whenever an extended benefit period is to become effective in  
 23 this state as a result of a state "on" indicator, or an extended benefit  
 24 period is to be terminated in this state as a result of a state "off"  
 25 indicator, the commissioner shall make an appropriate public  
 26 announcement.

27 (d) Computations required by the provisions of IC 22-4-2-34(e)  
 28 shall be made by the department in accordance with regulations  
 29 prescribed by the United States Department of Labor.

30 (e) Each employer shall display and maintain in places readily  
 31 accessible to all employees posters concerning its regulations and shall  
 32 make available to each such individual at the time the individual  
 33 becomes unemployed printed benefit rights information furnished by  
 34 the department.

35 **(f) To file an initial claim under this chapter, an individual shall**  
 36 **provide in person to the department a document that identifies the**  
 37 **individual as approved by the department, including a driver's**  
 38 **license, birth certificate, or passport.**

39 SECTION 9. IC 22-5-1.5 IS ADDED TO THE INDIANA CODE  
 40 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 41 JULY 1, 2009]:

42 **Chapter 1.5. Employment of Unauthorized Aliens**

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1       **Sec. 1. (a) This chapter applies only to an employee that an**  
 2       **employer hires after January 1, 2010.**

3       **(b) This chapter does not apply to the following:**

4           **(1) A public utility (as defined in IC 8-1-2-1(a)) that is subject**  
 5           **to regulation by the Indiana utility regulatory commission**  
 6           **under IC 8-1-2.**

7           **(2) A hospital licensed under IC 16-21.**

8           **(3) A county hospital organized under IC 16-22.**

9           **(4) A municipal hospital organized under IC 16-23.**

10          **(5) A nonprofit corporation.**

11          **(6) A person who operates a business of transporting**  
 12          **emergency patients by ambulance or using a nontransporting**  
 13          **emergency medical services vehicle (as defined in**  
 14          **IC 16-31-3-0.5).**

15          **(7) A corporation organized under IC 8-1-13.**

16          **(8) A corporation organized under IC 23-17 that is an electric**  
 17          **cooperative and that has at least one (1) member that is a**  
 18          **corporation organized under IC 8-1-13.**

19       **Sec. 2. As used in this chapter, "agency" means any state or**  
 20       **local administration, agency, authority, board, bureau,**  
 21       **commission, committee, council, department, division, institution,**  
 22       **office, service, or other similar body of government created or**  
 23       **established by law that issues a license for purposes of operating a**  
 24       **business in Indiana.**

25       **Sec. 3. As used in this chapter, "employee" means an individual**  
 26       **who:**

27           **(1) works or is hired to work for at least one thousand five**  
 28           **hundred (1,500) hours during a twelve (12) month period;**

29           **(2) performs services for an employer; and**

30           **(3) is an individual from whom the employer is required to**  
 31           **withhold wages under IC 6-3-4-8 or is an employee described**  
 32           **in IC 6-3-4-8(l).**

33       **Sec. 4. (a) As used in this chapter, "employer" means a person**  
 34       **that:**

35           **(1) transacts business in Indiana;**

36           **(2) has a license issued by an agency; and**

37           **(3) employs one (1) or more individuals who perform**  
 38           **employment services in Indiana.**

39       **(b) The term includes the state, a political subdivision (as**  
 40       **defined in IC 3-5-2-38) of the state, and a self-employed person.**

41       **Sec. 5. As used in this chapter, "E-Verify" means the**  
 42       **employment verification pilot program jointly administered by the**

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1 United States Department of Homeland Security and the Social  
2 Security Administration or its successor program.

3 Sec. 6. As used in this chapter, "knowingly" has the meaning set  
4 forth in IC 35-41-2-2.

5 Sec. 7. (a) As used in this chapter, "license" means any agency  
6 permit, certificate, approval, registration, charter, or similar  
7 authorization that is:

8 (1) required by law; and

9 (2) issued by an agency;

10 for purposes of operating a business in Indiana.

11 (b) The term does not include an occupational or professional  
12 license.

13 Sec. 8. As used in this chapter, "person" means an individual, a  
14 corporation, a limited liability company, a partnership, or another  
15 legal entity.

16 Sec. 9. As used in this chapter, "unauthorized alien" has the  
17 meaning set forth in 8 U.S.C. 1324a(h)(3).

18 Sec. 10. An employer shall not knowingly employ an  
19 unauthorized alien.

20 Sec. 11. (a) Subject to the availability of funds, the attorney  
21 general may investigate a complaint filed with the attorney general  
22 that an employer knowingly employed an unauthorized alien in  
23 violation of section 10 of this chapter.

24 (b) In investigating a complaint under subsection (a), the  
25 attorney general shall verify the work authorization of the alleged  
26 unauthorized alien with the federal government under 8 U.S.C.  
27 1373(c).

28 (c) A complaint filed with the attorney general under subsection  
29 (a) must be:

30 (1) in writing; and

31 (2) signed by the individual filing the complaint.

32 Sec. 12. A state, county, or local official or employee may not  
33 attempt to make independently a final determination as to whether  
34 an individual is authorized to work in the United States.

35 Sec. 13. (a) If, after an investigation, the attorney general  
36 determines that an employer has knowingly employed an  
37 unauthorized alien, the attorney general shall notify the United  
38 States Immigration and Customs Enforcement.

39 (b) If the attorney general determines that an employer has  
40 knowingly employed an unauthorized alien and that any defenses  
41 to knowingly employing an unauthorized alien established under  
42 this chapter do not apply, the attorney general may notify:

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(1) local law enforcement agencies; and

(2) the prosecuting attorney in the county in which the unauthorized alien is employed.

The attorney general may not notify law enforcement agencies and the prosecuting attorney about the unauthorized alien unless the attorney general determines that the defenses established under this chapter do not apply.

**Sec. 14. (a)** The prosecuting attorney may bring a civil action for a violation of section 10 of this chapter against an employer in the county where the unauthorized alien employee is employed.

**(b)** A prosecuting attorney filing an action under subsection (a) may file only one (1) action against the employer relating to the employment of all unauthorized aliens employed by the employer at the time the prosecuting attorney files the action.

**(c)** A prosecuting attorney may file an additional action against an employer under this section for a second or subsequent violation of section 10 of this chapter only for violations allegedly committed by the employer after the employer receives notice that the prosecuting attorney has filed the initial action against the employer under this section.

**Sec. 15.** If a prosecuting attorney files an action under section 14 of this chapter, the court in which the action is filed may hold a hearing and make a determination of the action on an expedited basis.

**Sec. 16.** Except as provided in sections 18, 19, and 20 of this chapter, if a trier of fact determines that an employer knowingly employed an unauthorized alien in violation of section 10 of this chapter, the court may do the following:

(1) Order the employer to terminate the employment of all unauthorized aliens employed by the employer.

(2) Place the employer on probation for a three (3) year period. During the probationary period, the employer shall file a quarterly report with the attorney general concerning each new individual the employer hires at the specific business location where the unauthorized alien worked.

(3) Order the employer to file a sworn affidavit signed by the employer with the prosecuting attorney within three (3) business days after the order is issued under subdivision (1).

The affidavit must include a statement that the employer:

(A) has terminated the employment of all unauthorized aliens; and

(B) will not knowingly employ an unauthorized alien.

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**(4) Order an agency to:**

**(A) place the employer on probationary status for five (5) years with respect to a license described in section 17(a) of this chapter that is held by the employer; and**

**(B) require the employer to pay a one (1) time additional fee of one thousand dollars (\$1,000) for each license.**

**Sec. 17. (a) This section applies to all licenses held by an employer:**

**(1) that are necessary to operate the employer's business at the employer's business location where an unauthorized alien worked; or**

**(2) if a license is not necessary at the employer's business location described in subdivision (1), that are held by the employer for the employer's primary place of business.**

**(b) If an employer fails to file a sworn affidavit required under section 16(3) of this chapter with the prosecuting attorney not later than three (3) business days after the order requiring the filing of the affidavit is issued, the court may order the appropriate agencies to suspend all licenses that are held by the employer. All licenses suspended under this subsection may remain suspended until the employer files a sworn affidavit described under section 16(3) of this chapter with the prosecuting attorney.**

**(c) If the employer subject to an order filed under subsection (b) files a sworn affidavit required under section 16(3) of this chapter, the court may order the appropriate agencies to reinstate the employer's suspended licenses.**

**Sec. 18. If:**

**(1) a trier of fact determines that an employer knowingly employed an unauthorized alien in a second violation of section 10 of this chapter; and**

**(2) the violation referred to in subdivision (1) occurred not later than five (5) years after the date of the initial violation; the court may order the appropriate agencies to place the employer on probationary status for five (5) years in relation to all licenses described in section 17(a) of this chapter that are held by the employer and require the employer to pay a one (1) time additional fee of ten thousand dollars (\$10,000) for each license.**

**Sec. 19. If:**

**(1) a trier of fact determines that an employer knowingly employed an unauthorized alien in a third violation of section 10 of this chapter; and**

**(2) the violation referred to in subdivision (1) occurred not**

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1 later than five (5) years after the date of the initial violation;  
 2 the court may order the appropriate agencies to place an employer  
 3 on probationary status for five (5) years in relation to all licenses  
 4 described in section 17(a) of this chapter that are held by the  
 5 employer and require the employer to pay a one (1) time additional  
 6 fee of twenty-five thousand dollars (\$25,000) for each license.

7 **Sec. 20. If:**

8 (1) a trier of fact determines that an employer knowingly  
 9 employed an unauthorized alien in a fourth violation of  
 10 section 10 of this chapter; and

11 (2) the violation referred to in subdivision (1) occurred not  
 12 later than five (5) years after the date of the initial violation;  
 13 the court may order the appropriate agencies to permanently  
 14 revoke all licenses held by the employer that are described in  
 15 section 17(a) of this chapter.

16 **Sec. 21. (a)** If an agency receives an order from a court under  
 17 section 16(4), 18, or 19 of this chapter, the agency immediately  
 18 shall place the employer on probationary status in relation to the  
 19 license or licenses described in section 17(a) of this chapter that are  
 20 held by the employer to which the order relates and require the  
 21 employer to pay the applicable additional fee for each license.

22 (b) If an agency receives an order from a court under section  
 23 17(b), the agency immediately shall suspend the license or licenses  
 24 described in section 17(a) of this chapter that are held by the  
 25 employer to which the order relates.

26 (c) If an agency receives an order from a court under section 20  
 27 of this chapter, the agency immediately shall revoke the license or  
 28 licenses described in section 17(a) of this chapter that are held by  
 29 the employer to which the order relates.

30 **Sec. 22.** A court shall send copies of all orders issued under  
 31 sections 16, 17, 18, 19, and 20 of this chapter to the attorney  
 32 general.

33 **Sec. 23. (a)** In determining whether an individual is an  
 34 unauthorized alien for purposes of this chapter, a trier of fact may  
 35 consider only the federal government's verification or status  
 36 information provided under 8 U.S.C. 1373(c).

37 (b) The federal government's verification or status information  
 38 provided under 8 U.S.C. 1373(c) creates a rebuttable presumption  
 39 of an individual's lawful status.

40 (c) The court may:

41 (1) take judicial notice of the federal government's  
 42 verification or status information; and

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(2) request the federal government to provide automated or testimonial verification under 8 U.S.C. 1373(c).

Sec. 24. (a) A prosecuting attorney may not file an action against an employer under section 14 of this chapter for knowingly employing an unauthorized alien if the employer verified the employment authorization of the employed individual through E-Verify.

(b) If E-Verify or a successor program of E-Verify is not maintained by the federal government, a prosecuting attorney may not file an action against an employer under section 14 of this chapter for knowingly employing an unauthorized alien if the employer complied in good faith with the requirements of 8 U.S.C. 1324a(b).

Sec. 25. An employer may establish as an affirmative defense against an alleged violation under section 10 of this chapter that the employer complied in good faith with the requirements of 8 U.S.C. 1324a(b).

Sec. 26. The attorney general shall:

- (1) maintain copies of court orders received under section 22 of this chapter;
- (2) make the court orders available on the attorney general's Internet web site; and
- (3) establish and maintain a data base of the names and addresses of the employers that have a violation under this chapter.

Sec. 27. This chapter does not require an employer to take any action that the employer believes in good faith would violate federal law.

Sec. 28. (a) Except as provided in subsection (b), after January 1, 2010, an employer shall verify the employment eligibility of each employee of the employer through E-Verify after hiring the employee.

(b) If E-Verify or a successor program of E-Verify is not maintained by the federal government, an employer is not required to comply with subsection (a).

Sec. 29. A person who files a complaint with the attorney general or a prosecuting attorney under this chapter, knowing that the complaint is false or frivolous, commits a Class B misdemeanor.

Sec. 30. (a) An employer may not discharge an employee or in any way discriminate against any employee because the employee:

- (1) has filed a complaint or instituted or caused to be

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1 instituted any proceeding under or related to this chapter;  
 2 (2) has testified or is about to testify in any proceeding under  
 3 this chapter; or  
 4 (3) exercised on behalf of the employee or others any right  
 5 afforded by this chapter.

6 (b) Any employee who believes that the employee has been  
 7 discharged or otherwise discriminated against by any person in  
 8 violation of this section may, within thirty (30) calendar days after  
 9 the violation occurs, file a complaint with the commissioner of  
 10 labor alleging the discrimination.

11 (c) Upon receipt of a complaint under subsection (b), the  
 12 commissioner of labor shall investigate as the commissioner of  
 13 labor considers appropriate.

14 (d) If after an investigation, the commissioner of labor  
 15 determines that the provisions of this section have been violated,  
 16 the commissioner of labor, through the attorney general, shall, not  
 17 later than one hundred twenty (120) days after receipt of the  
 18 complaint under subsection (b), bring an action in the circuit  
 19 courts of Indiana.

20 (e) The circuit courts of Indiana have jurisdiction to restrain  
 21 violations of this section and order all appropriate relief, including  
 22 rehiring, or reinstatement of the employee to the employee's  
 23 former position with back pay, after taking into account any  
 24 interim earnings of the employee.

25 (f) Not later than ninety (90) days after the receipt of a  
 26 complaint filed under this section, the commissioner of labor shall  
 27 notify the complainant in writing of a determination under this  
 28 section.

29 **Sec. 31. The suspension or revocation of a license under this**  
 30 **chapter does not relieve an employer from an obligation to**  
 31 **withhold, collect, or pay income tax on wages paid by the employer**  
 32 **to an employee.**

33 **Sec. 32. This chapter shall be enforced without regard to race or**  
 34 **national origin.**

35 SECTION 10. IC 22-5-2.5 IS ADDED TO THE INDIANA CODE  
 36 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 37 JULY 1, 2009]:

38 **Chapter 2.5. Verification of Employment Status**

39 **Sec. 1. (a) As used in this chapter, "contractor" means a person**  
 40 **that has a public contract for services with a state agency or**  
 41 **political subdivision.**

42 **(b) The term includes a subcontractor, contract employee, or**

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1 staffing agency.

2 Sec. 2. As used in this chapter, "E-Verify" means the  
3 employment verification pilot program jointly administered by the  
4 United States Department of Homeland Security and the Social  
5 Security Administration or its successor program.

6 Sec. 3. As used in this chapter, "political subdivision" has the  
7 meaning set forth in IC 36-1-2-13.

8 Sec. 4. As used in this chapter, "public contract for services"  
9 means any type of agreement, regardless of how the agreement is  
10 denominated, between a state agency or political subdivision and  
11 a contractor for the procurement of services.

12 Sec. 5. As used in this chapter, "public employer" means a state  
13 agency or political subdivision.

14 Sec. 6. As used in this chapter, "state agency" has the meaning  
15 set forth in IC 4-6-3-1.

16 Sec. 7. As used in this chapter, "unauthorized alien" has the  
17 meaning set forth in 8 U.S.C. 1324a(h)(3).

18 Sec. 8. A public employer shall use E-Verify to verify the work  
19 eligibility status of all employees of the public employer hired after  
20 June 30, 2009.

21 Sec. 9. A contractor shall use E-Verify to verify the work  
22 eligibility status of all employees of the contractor hired after June  
23 30, 2009.

24 Sec. 10. After June 30, 2009, a public employer may not enter  
25 into a public contract for services with a contractor unless the  
26 contractor uses E-Verify to verify the work eligibility status of the  
27 contractor's newly hired employees.

28 Sec. 11. This chapter shall be enforced without regard to race or  
29 national origin.

30 SECTION 11. IC 34-30-2-87.3 IS ADDED TO THE INDIANA  
31 CODE AS A NEW SECTION TO READ AS FOLLOWS  
32 [EFFECTIVE JULY 1, 2009]: **Sec. 87.3. IC 22-5-1.5-24 (Concerning  
33 certain employers that employ unauthorized aliens).**

34 SECTION 12. IC 35-33-8-4 IS AMENDED TO READ AS  
35 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) The court shall  
36 order the amount in which a person charged by an indictment or  
37 information is to be held to bail, and the clerk shall enter the order on  
38 the order book and indorse the amount on each warrant when issued.  
39 If no order fixing the amount of bail has been made, the sheriff shall  
40 present the warrant to the judge of an appropriate court of criminal  
41 jurisdiction, and the judge shall indorse on the warrant the amount of  
42 bail.

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(b) Bail may not be set higher than that amount reasonably required to assure the defendant's appearance in court or to assure the physical safety of another person or the community if the court finds by clear and convincing evidence that the defendant poses a risk to the physical safety of another person or the community. In setting and accepting an amount of bail, the judicial officer shall take into account all facts relevant to the risk of nonappearance, including:

- (1) the length and character of the defendant's residence in the community;
- (2) the defendant's employment status and history and his ability to give bail;
- (3) the defendant's family ties and relationships;
- (4) the defendant's character, reputation, habits, and mental condition;
- (5) the defendant's criminal or juvenile record, insofar as it demonstrates instability and a disdain for the court's authority to bring him to trial;
- (6) the defendant's previous record in not responding to court appearances when required or with respect to flight to avoid criminal prosecution;
- (7) the nature and gravity of the offense and the potential penalty faced, insofar as these factors are relevant to the risk of nonappearance;
- (8) the source of funds or property to be used to post bail or to pay a premium, insofar as it affects the risk of nonappearance; ~~and~~
- (9) that the defendant is a foreign national who has not been lawfully admitted to the United States; and**
- ~~(9)~~ **(10)** any other factors, including any evidence of instability and a disdain for authority, which might indicate that the defendant might not recognize and adhere to the authority of the court to bring him to trial.

SECTION 13. IC 35-43-5-2, AS AMENDED BY P.L.106-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person who knowingly or intentionally:

- (1) makes or utters a written instrument in such a manner that it purports to have been made:
  - (A) by another person;
  - (B) at another time;
  - (C) with different provisions; or
  - (D) by authority of one who did not give authority; or
- (2) possesses more than one (1) written instrument knowing that the written instruments were made in a manner that they purport

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to have been made:

(A) by another person;

(B) at another time;

(C) with different provisions; or

(D) by authority of one who did not give authority;

commits counterfeiting, a Class D felony.

**(b) A person who knowingly or intentionally makes more than one (1) written instrument in such a manner that the written instrument purports to have been made:**

**(1) by another person;**

**(2) at another time;**

**(3) with different provisions; or**

**(4) by authority of one who did not give authority;**

**or who knowingly or intentionally distributes such a written instrument commits making or distributing a forged instrument, a Class B felony.**

~~(b)~~ **(c)** A person who, with intent to defraud, makes, utters, or possesses a written instrument in such a manner that it purports to have been made:

(1) by another person;

(2) at another time;

(3) with different provisions; or

(4) by authority of one who did not give authority;

commits forgery, a Class C felony.

~~(c)~~ **(d)** This subsection applies to a person who applies for a driver's license (as defined in IC 9-13-2-48). A person who:

(1) knowingly or intentionally uses a false or fictitious name or gives a false or fictitious address in an application for a driver's license or for a renewal or a duplicate of a driver's license; or

(2) knowingly or intentionally makes a false statement or conceals a material fact or otherwise commits fraud in an application for a driver's license;

commits application fraud, a Class D felony.

~~(d)~~ **(e)** This subsection applies to a person who applies for a state identification card (as issued under IC 9-24-16). A person who:

(1) knowingly or intentionally uses false information in an application for an identification card or for a renewal or duplicate of an identification card; or

(2) knowingly or intentionally makes a false statement or otherwise commits fraud in an application for an identification card;

commits application fraud, a Class D felony.

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SECTION 14. IC 35-43-5-2.5, AS ADDED BY P.L.109-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.5. (a) A person who knowingly or intentionally possesses ~~produces, or distributes~~ a document not issued by a government entity that purports to be a government issued identification commits a Class A misdemeanor.

(b) A person who knowingly or intentionally produces or distributes a document that is not issued by a government entity and that purports to be a government issued identification commits a Class C felony.

SECTION 15. IC 36-2-13-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7.5. (a) The sheriff shall make a reasonable effort to determine the citizenship or immigration status of a person who is:

(1) charged with a felony or with operating a vehicle while intoxicated; and

(2) confined, for any period, in a county jail.

(b) If the person described under subsection (a) is a foreign national, the sheriff shall make a reasonable effort to verify that:

(1) the person has been lawfully admitted to the United States; and

(2) if the person has been lawfully admitted, the lawful status of the person has not expired.

(c) If the sheriff is unable to verify the lawful status of a person described under subsection (a) from documents in possession of the person, the sheriff shall attempt to verify the lawful status of the person not later than forty-eight (48) hours through a query to the Law Enforcement Support Center of the United States Department of Homeland Security or other office or agency designated for the purpose of verifying the lawful status of person by the United States Department of Homeland Security.

(d) If the sheriff is unable to verify the lawful status of a person under this section, the sheriff shall notify the United States Department of Homeland Security that the lawful status of a person described under subsection (a) could not be verified.

(e) Upon request from the department of correction, the sheriff shall make available a copy of any information or documents the sheriff collects in attempting to determine the citizenship or immigration status of a person under this section to the department of correction.

SECTION 16. [EFFECTIVE JULY 1, 2009] A prosecuting

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1 attorney may file an action against an employer under  
2 IC 22-5-1.5-14, as added by this act, only for a violation of  
3 IC 22-5-1.5-10, as added by this act, that occurs after January 1,  
4 2010.

5 SECTION 17. [EFFECTIVE JULY 1, 2009] IC 9-24-18-7,  
6 IC 9-25-8-2, IC 35-43-5-2(b), and IC 35-43-5-2.5, all as amended by  
7 this act, apply only to offenses that are committed after June 30,  
8 2009.

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